

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of Wisconsin Energy Corporation for
Approval to Acquire the Outstanding Common
Stock of Integrys Energy Group, Inc.

9400-YO-100

**DIRECT TESTIMONY
OF NILAKSH KOTHARI ON BEHALF OF
GREAT LAKES UTILITIES**

1 **Q. Please state your name, affiliation and business address.**

2 A. Nilaksh Kothari. I am the general manager of Manitowoc Public Utilities
3 ("MPU") and the Administrative Manager of Great Lakes Utilities ("GLU"). My
4 business address is 1303 S. 8th Street, Manitowoc, Wisconsin.

5 **Q. On whose behalf are you submitting this testimony?**

6 A. I am submitting this testimony on behalf of GLU, which has intervened in this
7 proceeding, and its members, including MPU.

8 **Q. What is the purpose and scope of your testimony?**

9 A. GLU and its members have two central concerns over the proposed acquisition.
10 The first is a concern that the proposed acquisition will provide little or no benefit to us
11 as wholesale customers and that, in fact, it poses a great deal of risk for future increases
12 in the cost of purchased power, which will be passed on to our customers. The second is
13 that the proposed acquisition will result in a consolidation of ownership interests in the
14 American Transmission Company, LLC and its management company (together,
15 "ATC"), which owns and operates electric transmission facilities formerly owned by
16 numerous electric utilities throughout Wisconsin and the Upper Midwest, including MPU
17 and several other GLU members. In our view, such consolidation will have a potentially

1 detrimental effect on transmission planning and transmission cost allocation in
2 Wisconsin. With respect to the first concern, GLU has intervened in the Section 203
3 proceeding at the Federal Energy Regulatory Commission ("FERC") and submitted an
4 affidavit from Gary Price, a wholesale rate specialist with whom GLU works regularly, to
5 explain our concern over potential wholesale power cost increases. I have included Mr.
6 Price's affidavit as Ex.-GLU-Kothari-1 to my testimony. GLU has also engaged Mark
7 Lowry, a noted energy economist, to provide additional testimony on the lack of
8 demonstrated benefit from the transaction to customers and our concern for potential
9 power cost increases. My focus will be on the second of the concerns I mentioned,
10 namely, the potential impact of the proposed transaction on the operation and
11 management of ATC.

12 **Q. Can you describe Great Lakes Utilities in more detail?**

13 **A.** Yes. GLU is a municipal electric company organized under the Wisconsin
14 Statutes. Its members include ten municipal utilities located primarily in north, central
15 and western Wisconsin. These members include Wisconsin Rapids, Manitowoc,
16 Marshfield, Clintonville, Shawano and Kiel, all of whom are located in the region of the
17 state served by Wisconsin Public Service Corporation ("WPSC"). GLU also has one
18 member in the Upper Peninsula of Michigan (Escanaba). In 2014, GLU's aggregate load
19 was approximately 525 MW and 3 million MWhs. GLU provides a wide range of power
20 supply, energy market and planning services to its members. With the assistance of
21 MPU, the state's largest municipal utility, GLU manages a diverse portfolio of power
22 supply resources, including long term contracts with both WPSC and Wisconsin Electric

1 Power Company ("WEPCo"), with whom GLU and its members have had long-standing
2 business relationships.

3 **Q. Can you provide some additional background on why ATC was formed?**

4 A. Sure. ATC was created by the Wisconsin legislature in 1999. The idea, as I
5 understand it, was to provide a new framework for the ownership of transmission in
6 Wisconsin. Prior to ATC's formation, Wisconsin's system was underbuilt and there were
7 significant reliability issues. There was also widespread concern over vertical integration
8 and the ability for the state's generation owners to exert market power over the use of
9 their transmission systems. In fact, transmission issues were a principal reason why
10 WEPCO's proposed merger with the Northern States Power Company was derailed in the
11 late 1990's. The new legislation, known as Act 9 (codified in Wis. Stat. §196.485),
12 directed transmission-owning utilities to divest their transmission assets to a new,
13 independent transmission company that was responsible for planning and managing the
14 transmission system in Wisconsin. ATC was certified as that transmission company by
15 the Public Service Commission of Wisconsin in an order issued in PSC Docket No. 137-
16 NC-100 in 2000 (PSC REF#: 2765). ATC later joined what is now known as the
17 Midcontinent Independent System Operator ("MISO") as a transmission owner and
18 transmission provider.

19 **Q. How did ATC acquire its transmission assets?**

20 A. Consistent with the legislature's intent in Act 9, all of Wisconsin's major
21 transmission-owning utilities, including WEPCO and WPSC, divested their interests in
22 transmission facilities to ATC in exchange for ownership shares in the new company.
23 Many municipal utilities and electric cooperatives also transferred their transmission

1 assets to ATC when the company was first formed in 2001, including several GLU
2 members. Other municipal utilities and municipal entities, including WPPI Energy
3 contributed capital in lieu of transmission facilities and also received an ownership share
4 in ATC. According to its most recent PSCW quarterly filing (PSC REF#: 224850),
5 approximately 88% of ATC is presently controlled by investor-owned utilities and 12%
6 by consumer owned utilities, such as GLU's members, WPPI and the electric
7 cooperatives. This diversity of ownership interests has allowed ATC to develop the
8 transmission system in a more or less independent manner, meaning, without favoring
9 any one set of generation owners or load serving entities.

10 **Q. What is the purpose of ATC?**

11 A. According to the statutes, ATC is a Wisconsin company whose "sole purpose [is]
12 to provide for an adequate and reliable transmission system that meets the needs of all
13 users that are dependent on the transmission system and that supports effective
14 competition in energy markets without favoring any market participant." Wis. Stat. §
15 196.485(1)(ge).

16 **Q. Has ATC achieved this purpose?**

17 A. Yes, for the most part. ATC has operated independently, in the sense that it plans,
18 constructs, and operates a transmission grid that serves the interests of ratepayers
19 throughout Wisconsin and adjoining areas, including GLU's member customers in the
20 north and central parts of the state within the ATC footprint. It has built out a reliable
21 transmission system that has allowed Eastern Wisconsin to avoid the reliability issues we
22 once saw in the 1990's. However, that success has come at a cost. MPU's customers, for
23 example, have seen the average cost of transmission service, which is passed through our

1 power bills, increase on average about 25% a year from 2002 to 2014. These increases
2 are shown in Ex-GLU-Kothari-2, which I have included with my testimony. MPU has
3 also had difficulty in getting key projects on ATC's radar screen. One project, the Shoto-
4 Custer 138 kV transmission line, which would benefit MPU customers, among others,
5 has been a "provisional" project in ATC's 10-year plan for the better part of the last 10
6 years.

7 **Q. How does the proposed acquisition impact ATC's ability to continue**
8 **achieving its statutory purpose?**

9 A. We believe the proposed acquisition of Integrys by Wisconsin Energy will put
10 ATC's independence at risk. The combined ownership interest of the Applicants in ATC
11 will be 60% if the transaction is approved by the Commission (the 34% share currently
12 owned by WPSC and the 26% share currently owned by WEPCo). The next largest
13 current owner would then be Wisconsin Power & Light Company, which has a 16.38%
14 ownership share in ATC. No other entity owns more than 8% of ATC. Together, the
15 municipal owners of ATC (other than WPPI Energy) own a little over 3% (of which
16 under 2% is attributable to GLU members). Moreover, the loss of WPSC's ownership
17 share through Wisconsin Energy's acquisition means that the more rural areas of north
18 central and northeastern Wisconsin served by WPSC will not be represented on ATC's
19 Board of Directors. The fact is, WEPCO and WPSC don't always see eye to eye on
20 transmission issues, as shown by the ongoing dispute between the two companies over
21 the allocation of transmission-related costs associated with running the Presque Isle
22 power plant in Upper Michigan. Since the ATC Board of Directors provides direction on
23 local transmission project planning-- including projects like the Shoto-Custer line

1 mentioned earlier -- loss of a diversity of geographical and load-serving interests on the
2 ATC Board could have a serious detrimental impact on ATC's ability to continue
3 operating in the "independent and collaborative" manner touted by Mr. Lauber in his
4 testimony on behalf of the Applicants. It could also mean less incentive to curb the
5 continued growth of the transmission system and thereby mitigate the rising cost of
6 transmission service currently being borne by electric ratepayers.

7 **Q. Haven't the Applicants put forward a proposal to address this concern for**
8 **loss of ATC's independence?**

9 A. Yes. My understanding is that the Applicants are proposing to vote only 34% of
10 their ownership shares independently, while committing to vote the remaining 26% of
11 their ownership shares in proportion to the way ATC's other owners vote, except for
12 certain corporate matters such as sale of the company's assets, merger, bankruptcy or
13 issuing a public offering. Because the ATC Board exercises control over much of the
14 company's transmission planning and operational functions, I understand that a
15 commitment not to use its majority interest to control the makeup of the Board is
16 significant. However, many aspects of the Applicants' proposal remain unclear to me,
17 including how it would be implemented and how it would be enforced. Moreover, even
18 if those aspects could be clarified, the proposed voting commitment does not address the
19 loss of regional and load-serving diversity mentioned earlier.

20 **Q. Do you have any proposals that would better address the concerns you have**
21 **identified?**

22 A. Yes. In my view, the most direct way to ensure that ATC is permitted to retain its
23 independence and diversity of perspective is for a share of the Applicants' ownership

1 interest to be divested and made available at a fair market value to other existing ATC
2 owners, in particular cooperatives and municipals. The available share would have to be
3 big enough to keep WEC's remaining interest under 50%. If the Commission is unwilling
4 to mandate such a divestment, I would at least like to see a mechanism set up to enable
5 entities presently unrepresented on the ATC Board to independently exercise control over
6 the 26% voting interest the Applicants have offered to reserve. The Commission could
7 also require the Applicants to agree to allow any vacant seats on the ATC Board to be
8 filled by someone affiliated with a currently unrepresented entity, especially entities, like
9 municipals and cooperatives, that are focused on serving customer, rather than
10 shareholder interests. This seems especially critical to me given the rising cost of
11 transmission mentioned earlier.

12 **Q. Does that conclude your direct testimony?**

13 **A. Yes.**